

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

NANCY AUVEL.

Petitioner,

UNKNOWN,

Respondent.

Civil No. 11-1013 MMA (BGS)

**ORDER DISMISSING PETITION
WITHOUT PREJUDICE AND WITH
LEAVE TO AMEND**

16 Petitioner, a state prisoner represented by counsel, has submitted a Petition for Writ of
17 Habeas Corpus pursuant to 28 U.S.C. § 2254, and paid the \$5.00 filing fee. Review of the
18 Petition reveals that Petitioner has failed to name a proper respondent. On federal habeas, a state
19 prisoner must name the state officer having custody of him as the respondent. *Ortiz-Sandoval*
20 *v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996) (citing Rule 2(a), 28 U.S.C. foll. § 2254). “The
21 ‘state officer having custody’ may be ‘either the warden of the institution in which the petitioner
22 is incarcerated . . . or the chief officer in charge of state penal institutions.’” *Id.* (quoting Rule
23 2(a), 28 U.S.C. foll. § 2254 advisory committee’s note).

24 Here, Petitioner has failed to name a Respondent. In order for this Court to entertain the
25 Petition filed in this action, Petitioner must name the warden currently in charge of the state
26 correctional facility in which Petitioner is presently confined or the Secretary of the California
27 Department of Corrections and Rehabilitation. *Brittingham v. United States*, 982 F.2d 378, 379
28 (9th Cir. 1992) (per curiam).

1 Accordingly, the Court **DISMISSES** the Petition without prejudice and with leave to
2 amend due to Petitioner's failure to name a proper respondent. To have this case reopened,
3 Petitioner must file a First Amended Petition no later than July 17, 2011 in conformance with
4 this Order.

5 **IT IS SO ORDERED.**

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7 DATED: May 20, 2011

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10 
11 Hon. Michael M. Anello
12 United States District Judge

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14 Copies to: ALL PARTIES

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